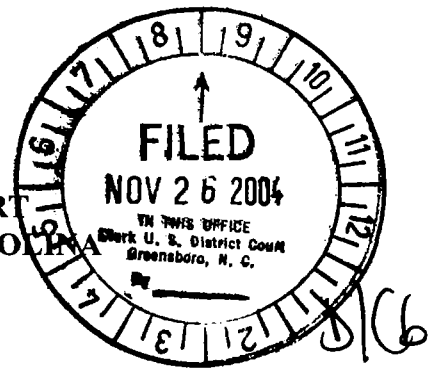


**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**



Scottie Lee Graves,

Plaintiff,

v.

Captain C. Reid, et al.,

Defendant(s).

1:04 CV 01113

ORDER AND RECOMMENDATION OF MAGISTRATE JUDGE ELIASON

Plaintiff, a prisoner, has submitted a civil rights action pursuant to 42 U.S.C. § 1983, and has asked that he be allowed to proceed in forma pauperis.¹ The form of the complaint is such that serious flaws make it impossible to further process this complaint. The problems are:

1. Pursuant to the Prison Litigation Reform Act, plaintiff may no longer proceed in forma pauperis in this Court unless he is under imminent danger of serious physical injury. The Act provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). In this Court alone, plaintiff has had over three cases dismissed on the grounds that they were frivolous. [Nos. 1:02CV35, 1:01CV562, 1:01CV561, 1:00CV261, 1:00CV245] Plaintiff is not under any imminent danger of serious physical injury.

2. The complaint is not on forms prescribed for use by this Court, nor is the information requested by such forms and necessary to process the complaint pursuant to 28 U.S.C. § 1915A contained in plaintiff's submission. See LR 7.1(e).

Consequently, this particular complaint should be dismissed, but without prejudice to plaintiff filing a new complaint, on the proper Section 1983 forms, along with the \$150 filing fee.

¹ Saipen Williams did not sign the complaint and is not considered a plaintiff in this action.

In forma pauperis status is granted for the sole purpose of entering this order and recommendation.

IT IS THEREFORE ORDERED that in forma pauperis status is granted for the sole purpose of entering this order and recommendation.

IT IS RECOMMENDED that this action be filed and dismissed sua sponte without prejudice to plaintiff filing a new complaint, on the proper Section 1983 forms, along with the \$150 filing fee.


United States Magistrate Judge

November 26, 2004